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FILE

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Before the
Federal Communications Commission
Washington, DC 20554

ORIGINAL
RECEIVED FILE

In the Matter of

DEC 29 1992

Implementation of Section 10
of the Cable Consumer Protection
and Competition Act of 1992

FCC - MAIL ROOM

MM Docket No. 92-258

Indecent Programming and
Other Types of Materials
on Cable Access Channels

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DEC 29 1992

To the Commission:

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MOTION FOR LEAVE TO FILE REPLY COMMENTS OUT OF TIME

Pursuant to Section 1.2 of the Commission's Rules, the New York Citizens Committee for Responsible Media ("NYCCRM") respectfully requests leave to file late reply comments in the above proceeding, which concerns restrictions on cable access programming. NYCCRM is a not-for-profit, citizens group primarily concerned with promoting leased and public access to cable channels in New York City. Reply comments in this proceeding were due on December 21, 1992, a mere 14 days after the deadline for filing initial comments. NYCCRM membership did not receive copies of comments that were filed by other parties until last week. With very limited resources, we were unable to timely complete reply comments by the December 21 deadline. No party will be prejudiced by acceptance of these late-filed reply comments. Good cause therefore exists to permit late filing of these reply comments.

Respectfully submitted,

Robert T. Perry

ROBERT T. PERRY
509 12th Street, Apt. 2C
Brooklyn, New York 11215
(718) 768-2209

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December 22, 1992

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To the Commission:

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COMMENTS OF
NEW YORK CITIZENS COMMITTEE FOR RESPONSIBLE MEDIA

The New York Citizens Committee for Responsible Media ("NYCCRM") respectfully submits these reply comments in this proceeding to consider the Commission's proposed rule implementing Section 10 of the Cable Consumer Protection and Competition Act of 1992 ("Cable Act of 1992").

Section 10 would:

- A) allow any cable operator to enforce a written and published policy prohibiting any leased access programming which they "reasonably believe" to contain "patently offensive" descriptions or depictions of sexual or excretory activities or organs;
- B) require cable operators to place all "indecent" programs, not otherwise prohibited, on a single, blocked channel, to which access is available only through a written subscriber request.
- C) require leased access programmers to inform the cable operator if their program contains "indecent" material;

- D) allow cable operators to prohibit any programming on public, educational, or government (PEG) access channels that contain "obscene material, sexually explicit conduct, or material soliciting or promoting unlawful conduct".

In addition, Section 10 holds Cable Operators liable for any programming that "involves obscene material" carried on mandatory access channels.

NYCCRM is a not-for-profit, citizens group concerned with issues of public access to the electronic media and media democracy. Its membership includes access producers, community organizations, independent video and filmmakers, and interested viewers. In the 1980s, NYCCRM New York City during the cable franchising process for the outer boroughs (Brooklyn, Queens, Staten Island, and The Bronx) and the renewal franchising process for Manhattan. Many of its policy recommendations for PEG and Leased Access were adopted by the City as its negotiating position with cable operators. We continue to safeguard the access to the cable medium achieved here in New York City, and work to expand the access concept to new, competing delivery systems that are being introduced in the 1990s.

At the outset, NYCCRM questions the legislative intent of Section 10 of the Cable Act of 1992. This section was introduced during the Senate floor debate, without the benefit of the consideration of the relevant House and Senate Committees. Its primary sponsors were Senator Jesse Helms, (R-NC), who has a long record of attempts to censor the free

expression of ideas, and Senator Tim Wirth (D-CO), whose re-election campaigns have always benefited from generous cable industry contributions.

NYCCRM concurs with the comments filed by The Alliance for Communications Democracy, et. al. ("ACD"), that Section 10 and the proposed rule violate applicable First Amendment principles. Nevertheless, NYCCRM recognizes the Commission's obligation to issue a rule implementing Section 10 and offers these brief reply comments to the initial comments on the proposed rule.

I. MANHATTAN PUBLIC ACCESS CHANNELS HAVE BECOME A VITAL PUBLIC FORUM FOR LOCAL EXPRESSION DESPITE CABLE OPERATOR INDIFFERENCE AND HOSTILITY.

As Manhattan Neighborhood Network ("MNN") observes (MNN Comments at 2), public access has existed in Manhattan for more than 20 years, until recently under the administrative control of the two franchised cable operators who serve Manhattan.¹ MNN further notes that there are currently 590 public access programs offered on Manhattan cable systems, totalling 300 hours of programming per week (MNN Comments at 3). The diversity of that programming is evident from the programming schedule in the June/July 1992 issue of ACCESS MANHATTAN!. (See Exhibit A.)

¹Indeed, Manhattan was the first major urban area to be wired for cable. The Manhattan experience with public access thus preceded all other experience with cable public access in an urban setting.

Manhattan's public access channels offer narrowcast programming for every racial and ethnic group living in that borough of New York City. There are, for example, public access programs for African Americans ("Flo Kennedy"), Hispanics ("Latinos En Accion"), Jews ("Jewish Task Force"), , and Russian Americans (" Russian-American TV"). There are also public access programs that target Manhattan's sizeable gay population ("Out in the '90s: Gay News Network" and "The Closet Case Show"). Another public access program addresses the concerns of the disabled ("Disabled Hotline"). Many public access programs are devoted to arts and culture (e.g., "Egg Cream Theatre" and "Dave Channon's Volcanic Video"). These include several programs that feature rap, dancehall reggae and world beat music (e.g., "House of Rap" and "Viddym's Reggae & World Beat"). Finally, a number of public access programs address vital issues of local importance (e.g., "Interfaith Assembly on Homelessness and Housing").

Collectively, Manhattan's public access channels serve programming needs largely ignored by Manhattan's franchised cable operators. Some public access programs even counter the cable operators' propaganda accompanying monthly bills to cable subscribers (e.g., "Inter-Active TV with Jim Chladek").²

²Another example of how public access channels have enabled cable subscribers to counter cable operators' propaganda occurred several years ago on Long Island, where Cablevision had not renewed Madison Square Garden Network's carriage contract, thus depriving cable subscribers of Yankees' games. A group of subscribers produced a public access program countering Cablevision's version of its dispute with MSGN, which had aired

These channels thus provide an important public forum for those who live in Manhattan.

The wealth of public access programming in Manhattan is even more impressive, when one considers the franchised cable operators' disinterest in promoting such programming. Over the years, for example, Manhattan Cable Television, Inc. ("MCTV"), the cable operator franchised to serve lower Manhattan during most of the 1970s and 1980s, never provided a studio for public access program productions nor did it list public access programs in its monthly printed guide for cable subscribers.³

To be sure, Manhattan's public access channels feature some sexually explicit programming. But such programming may have serious value for the local community. The Closet Case Show, first aired on public access channels in late 1984, has long promoted safe sex activity among gay men, often using explicit films of safe sex practices. A 1987 study sponsored by the Gay Men's Health Crisis concluded that such sexually explicit programming was often more effective than other techniques in discouraging risky sexual behavior. Various segments of The Closet Case Show have received critical

on Long Island 12, Cablevision's local news channel.

³MCTV also periodically preempted public access channel time to offer its own cable programming, in violation of its franchise agreement with New York City. On April 6, 1985, for example, it unlawfully preempted four public access producers during two prime-time hours to present The Nashville Network's live show from Radio City Music Hall. See Exhibit B.

acclaim from the gay community here and abroad. Despite the serious value of such programming, MCTV has regularly censored The Closet Case Show in violation of Section 611(c) of the Cable Communications Policy Act of 1984, 47 U.S.C. § 531(c), which precluded such assertion of editorial control. (See Exhibit C.)

The Commission is well aware that public access programs such as The Closet Case Show will almost certainly disappear from public (and leased) access channels if Section 10 of the 1992 Cable Act is implemented, notwithstanding the serious value of such programming. Just as broadcasters and cable operators have balked at airing graphic anti-abortion ads,⁴ cable operators will henceforth censor sexually explicit programming over access channels, even if such programming concerns core political speech.⁵

⁴FCC Asked to Rule Fetus Image Indecent, Broadcasting, Aug. 3, 1992, at 57; Abortion Political Ad Question Back at FCC, Broadcasting, Sept. 7, 1992, at 30; Harbor for Abortion Ads, Broadcasting, Nov. 2, 1992, at 26; FCC Drifts Toward Safe Harbor for Abortion Ads, Broadcasting, Nov. 9, 1992, at 48; Ga. Anti-Abortion Ads Spark Fireworks, Multichannel News, July 13, 1992, at 20; St. Louis Systems Run Anti-Abortion Ads, Multichannel News, July 27, 1992, at 38; Milwaukee Airs Anti-Abortion Ads, Multichannel News, Oct. 19, 1992, at 20.

⁵There is a long tradition of mixing sexually explicit materials with core political speech. During the French Revolution, for example, a print entitled Grand DeBandement de L'armee Anticonstitutionnelle appeared in an ultra-royalist newspaper. It portrayed the royalist army dispersing because several women with revolutionary sympathies had lifted their skirts and disrespectfully displayed their buttocks. The title contains several puns deriving from the various meanings of "debander," which include "to disband" and "to lose one's erection." V. Cameron, Political Exposures: Sexuality and Caricature in the French Revolution in Eroticism and the Body

II. SECTION 10 AND THE PROPOSED RULE VIOLATE APPLICABLE FIRST AMENDMENT PRINCIPLES.

NYCCRM agrees with ACD that Section 10 of the 1992 Cable Act and the proposed rule violate basic First Amendment principles. Nevertheless, we believe that some of ACD's analysis requires elaboration and clarification.

A. PUBLIC ACCESS CHANNELS ARE TRADITIONAL PUBLIC FORA.

ACD correctly observes that public access channels are locally created public fora, but suggest that they are designated rather than traditional public fora. (ACD Comments at 34-38.) To the contrary, we believe that public access channels fall in the latter category of public fora.

Traditional public fora consist of "places which by long tradition or by government fiat have been devoted to assembly and debate...." Perry Education Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 45 (1983). The clearest examples of such public fora are public streets, sidewalks and parks. Id.; Cornelius v. NAACP Legal Defense and Educational Fund, Inc., 473 U.S. 788, 802 (1985). But the category is not limited to such "quintessential" public fora. Perry, 460 U.S. at 45. Traditional public fora may include "'other similar public places.'" Hudgens v. NLRB, 424 U.S. 507, 515 (1976), quoting Amalgamated Food Employees Union Local 590 v. Logan

Valley Plaza, Inc., 391 U.S. 308, 315 (1968), overruled on other grounds, Hudgens v. NLRB, 424 U.S. 507 (1976). See also United States v. Grace, 461 U.S. 171, 177(198) (traditional public fora include "'public places' historically associated with the free exercise of expressive activities, such as streets, sidewalks and parks" (emphasis added)). Moreover, the category is not static, since it includes public fora "clearly held in trust, either by tradition or recent convention, for the use of the citizens at large." Members of City Council of City of Los Angeles v. Taxpayers for Vincent, 466 U.S. 789, 815 n.2 (1984). Such "recent convention" may result from "government fiat." Perry, 460 U.S. at 45.

Public access channels clearly fall in the category of traditional public fora. Whether by "government fiat" or "recent convention," or both, these channels have typically been available to the public for expressive activities since their creation. Indeed, in recognizing that "[p]ublic access channels are often the video equivalent of the speaker's soap box or the electronic parallel to the printed leaflet," H.R. Rep. No. 934, 98th Cong., 2d Sess. 30 (1984), reprinted in 1984 U.S.C.C.A.N. 4655, 4667, Congress virtually equated public access channels to public streets, sidewalks and parks, where speakers address crowds on soap boxes and hand out printed leaflets.

The decision in Missouri Knights of the Ku Klux Klan v. Kansas City, Mo., 723 F. Supp. 1347 (W.D. Mo. 1989), is not to

the contrary. Plaintiffs there argued that Kansas City's public access channel was a traditional public forum. The court only assumed "for the sake of argument" that the channel was merely a designated public forum. Id., at 1352.

B. THE EFFECTIVENESS OF LOCKBOX DEVICES
DISTINGUISH THE CABLE MEDIUM FROM BOTH THE
BROADCAST AND TELEPHONE MEDIA.

ACD also persuasively argues that the unique features of the cable medium make the content-based, "indecentcy" regulation upheld for the broadcast medium, FCC v. Pacifica Found., 438 U.S. 726 (1978), inappropriate for the cable medium. ACD Comments at 38-42. Not only is there no "captive audience" for cable service, Sable Communications v. FCC, 492 U.S. 115, 127-28 (1989), since one "must make the affirmative decision to bring [cable service] into his home," Cruz v. Ferre, 755 F.2d 1415, 1419 (11th Cir. 1985), but parents also have "the ability to protect children" from unsuitable cable programming through the use of a "'lockbox' or 'parental key'" available from cable operators. Id. at 1415, 1420.

ACD neglects, however, to point out that lock-out features are now included in addressable converters, at no additional charge. The Time Warner cable systems in New York City, for example, advise cable subscribers in the local editions of TV Guide, that "[y]our convertor is equipped with a device that allows you to block out any program you do not wish your children to watch." (See Exhibit D.) Because every

cable system will eventually be addressable, all cable subscriber will eventually have converters with lock-out features, enabling them to block offensive programming without additional charge.

The effectiveness of cable lockbox devices not only distinguishes the cable medium from the broadcast medium, as ACD notes, but also distinguishes it from the telephone medium, for which the Commission has found customer premises blocking devices to be ineffective in enabling parents to monitor their children's access to adult message services. Carlin Communications, Inc. v. FCC, 837 F.2d 546, 554 (2d Cir. 1988), cert. denied, 488 U.S. 924 (1988). The court decisions which uphold more restrictive regulation of indecent telephone communications, id. at 557, Dial Info Servs Corp. v. Thornburgh, 938 F.2d 1535 (2d Cir 1991), cert. denied, 112 S.Ct. 966 (1992), are thus inapposite.

C. THE GROWTH IN ADULT PAY PER VIEW PROGRAMMING AMPLY DEMONSTRATES THE UNDERINCLUSIVENESS OF SECTION 10 AND THE PROPOSED RULE.

Recognizing a compelling governmental interest in the protection of minors from cable programming deemed unsuitable for viewing by their parents, we nevertheless agree with ACD that Section 10 and the proposed rules are underinclusive, given that they only concern sexually explicit programming on access channels (ACD Comments at 49-53). In reality, there is as much, if not more, sexually explicit programming on the

other cable channels, including those dedicated to pay per view.

Many cable operators now offer at least one adult pay per view channel. Playboy at Night is currently available to 7.6 million addressable subscribers on 239 cable systems, while Spice (originally named Rendezvous) is currently available to 5 million addressable subscribers on 123 cable systems. Database, Cablevision, Dec 14, 1992, at 51. Both have experienced rapid growth since their launches only three years ago. Id., Playboy at Night expects to double its current subscriber base within a year. Playboy May Go to Around the Clock Format, Multichannel News, June 29, 1992, at 6. While many cable operators initially offered Playboy at Night and Spice only during late night hours, some cable operators now offer these pay per view channels during daytime hours. Id.; Keeping It Quiet, Cablevision, April 8, 1991, at 16. The cable industry has become wildly enthusiastic about Playboy at Night, doubtless because it has generated over \$50 million in revenues for cable operators. Playboy Looks Good to Ops, Cablevision, June 1, 1992, at 12. The adult pay per view channel recently introduced a new show, "Secret Confessions and Fantasies," in which individuals described "their wildest sexual escapades -- real or wished for -- while the fantasies are reenacted by actors." A(nother) New View of Playboy, Cablevision, Nov. 30, 1992, at 22. Adult pay per view programming has proven to be so popular with cable operators

and cable subscribers that two other pay per view services have announced plans to launch adult pay per view channels.

Id. See also Request Television Eyeing an Adult Channel, Multichannel News, Oct. 5, 1992, at 26.⁶

Given the dramatic growth in adult pay per view programming offered over cable channels, it is patently clear that Section 10 and the proposed rule -- insofar as they purport to protect minors from programming which their parents deem unsuitable for viewing -- is underinclusive. Simply put, the majority of sexually explicit cable programming is found on channels under cable operators' editorial control, not on access channels.

ACD suggest that the narrow focus of Section 10 and the proposed rule may reflect a bias against viewpoints expressed on access channels. (ACD Comments at 52-53.) We believe that it also reflects a willingness to protect cable operators from competition in the market for adult programming services. If cable operators are allowed to eliminate or restrict sexually explicit programming on access channels, there will be less competition for their own sexually explicit programming. Thus, cable operators may well censor sexually explicit access programming, but offer comparable programming on other channels.

⁶The Time Warner cable systems in New York City now offer both Playboy at Night and Spice during daytime hours. As already noted, cable subscribers are advised that "[y]our converter is equipped with a device that allows you to block out any program you do not wish your children to watch." (See Exhibit D.)

CONCLUSION

NYCCRM agrees with ACD that Section 10 of the Cable Act of 1992 and the proposed rule (as best we can ascertain, given its broad and imprecise language) violate applicable First Amendment principles. They effectively grant private companies (cable operators) the power to act as public censors, a power traditionally reserved to government, and then only in very narrowly prescribed circumstances.

Censorship of access channels is unnecessary since technology has made it possible to fulfill the only legitimate government interest, e.g., which is to ensure that parents have the ability to protect their children from obscene and indecent programming on PEG and leased access channels. Furthermore, we feel that this technology, lockboxes, places the decision making power over children's viewing access where it belongs -- with parents.

Allowing a cable operator to censor access programming is not only unnecessary but is also harmful to true diversity, conferring such power on cable operators grants an active and interested party the ability to harass PEG and leased access producers for a number of purposes:

- 1) to regain channel capacity that they can re-program for profit;
- 2) reduce competition for their own premium and pay per view

adult programming; and

- 3) demand rate increases ostensibly to cover the technical costs of blocking channels or specific programs, and enforcement of censorship policies.

Ironically, adult pay per view channels, in which cable operators have a financial interest, would remain exempt from censorship, even though they raise the same parental concerns.

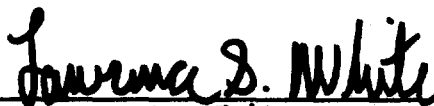
Given the vague criteria for censoring access programming, it seems inevitable that many disputes will arise. Public and leased access was created to give voice to economically and politically disenfranchised citizens, who have been shut out of the dominant commercial media. Access producers are dedicated citizens and entrepreneurs, often working in their spare time, with limited resources. Whatever methods the Commission adopts for settling disputes between cable operators and producers over censorship of programming will inevitably be unfair and ineffective, given the vast disparity of economic and legal resources available to the disputants. Many access producers will simply give up and not bother to produce shows. In any event, these disputes will create unnecessary delays in the cablecast of timely programs and seriously undermine the First Amendment goals of public and leased access.

NYCCRM urges the Commission to make lockboxes even more effective by encouraging access producers to provide descriptions of their programming prior to its presentation on

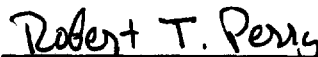
access channels. Moreover, cable operators should be required to list access programs in all printed and electronic program guides. This will allow viewers to make informed viewing judgements, block whatever programming they deem necessary, or cancel their cable subscription. A review of lockbox provisions should be undertaken by the Commission to ensure their universal availability and cable operator promotion.

In conclusion, NYCCRM feels that these suggestions represent the least intrusive method for effectively addressing parental concerns, and the best way to ensure the continued viability of PEG and leased access, the people's voice.

Respectfully submitted,



Lawrence S. White
Chairperson, NYCCRM
370 West 30th Street, Apt. 4B
New York, NY 10001



Robert T. Perry
509 12th Street, Apt. 2C
Brooklyn, NY 11215
(718) 768-2209


Adam Rosenberg

125 Stanton Street, Apt. 8
New York, NY 10002

December 22, 1992

EXHIBIT A

SUMMER

MANHATTAN Access! MANHATTAN

INCLUDES
PUBLIC ACCESS
TV GUIDE

June/July 1992
Vol.II, No.2

\$1.50

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New York
is
PRO
CHOICE!

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HIPPER SHRINK
page 5

DRAFT
James
Dean

NO
JUSTICE
NO
PEACE

VOTE ● 92

Special section begins on page 33



That's one patriotic gesture no one can argue with!

M A N H A T T A N

Access!

M A N H A T T A N

ACCESS! MANHATTAN, The Guide to Public Access Cable Television serving the customers of Time Warner Paragon Cable TV, Time Warner Manhattan Cable TV and the community at large, is published bimonthly on recycled paper in New York, New York, the city that never sleeps, it just paces from room to room in its underwear looking for the remote control.

Publisher and Editor-in-Chief
L. French

Contributors

Karen Burdick; Matthew Paris; Larry White; Art Lunam
Alex Quinn; Captain Video; Bree Scott-Hartland
Patty Adjamine; Dottie Pierce; Mike Keefe
Tuli Kupferberg; Elizabeth Forel
David Horsey; Brian Duffy
Dan Wasserman

Shout-outs

Vulcan & Hall of Fame (walls! walls! walls!)
Gustave Che; Rainbow Warrior; A.A.
Alfred E. Neuman, Sr.; Damon W.
Gaia; Timmy & Pattycake
Sister Souljah; J.D.

Letters, manuscripts, and 1/2" VHS tapes are welcome, but we can't return unsolicited material so *don't* send us your originals! All submissions become the property of *ACCESS! MANHATTAN*.

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If you want to inform . . . to entertain . . .
to experiment . . . to complain . . .

DO IT!

on Public Access

FEEDBACK

Of Things That Go Bump in Prime Time

To the Editor:

Many public access producers are suddenly finding themselves bumped off the air (often by shows that are not local in origin, or are primarily commercial, or do not consist of new programming). I challenge the argument that it is happening because there is "simply no more room" on the public access channels.

This bumping policy silences the more controversial shows, such as mine, which can be knocked off by opponents of our views. Cable operators are forbidden by the F.C.C. Policy Act of 1984 from controlling the content of public access shows. Not only have they been censoring me since 1984, but now that the new Community Access Organization (which promises no censorship) is about to take control of public access, Time Warner has found a convenient way to be rid of controversial producers before the transition takes place.

My program, *THE CLOSET CASE SHOW*, is—was—the only explicit safe-sex show on public access. (I have argued that public access is an ideal medium for carrying safe-sex propaganda. The channels can be locked out by parents; people are reached in the privacy of their own homes and don't have to be out of the closet and part of the gay community to get the message; and large numbers of people can be reached on a continuing basis.) The Gay Men's Health Crisis has given me their safe-sex education videos to share with my audience, but Time Warner calls them "obscene" and has blocked them from being aired.

It's ironic that Time Warner was a major sponsor of GMHC's May 31 AIDS Walk. TW helps GMHC raise money so it can offer the public safe-sex education. Then TW prohibits the same educational material from ever being seen!

The hardest thing about producing a public access show is that it takes time to be found, but we and our viewers find each other anyway. After a show has been on at a certain time, on a certain day, word-of-mouth and individual discovery can eventually cause it to catch on. New York has a proud history of long-lived public access shows, some that have spanned decades. Indeed, some shows are so popular that they give real competition to the commercial and pay channels, many of which Time Warner either owns or advertises on. How outrageous that this huge corporation, which competes with public access, is now allowed to destroy it!

Soon, if Time Warner complies with its legal obligation, there will be four, not two, public access channels. Soon the Community Access Organization will go into operation. Until then, we shouldn't sacrifice community programming that has found an audience just because badly written rules, arbitrarily enforced, pretend to demand it. What is demanded is that public access serve the interests of the community.

Rick X, producer
THE CLOSET CASE SHOW
CCTV, Box 790, New York, NY 10108

A/M replies:

On April 30, Manhattan Cable notified Rick X that, effective June 1, his show would be pre-empted in accordance with Rule 6 of the rules governing access to the public channels.

The spectre of censorship raises our hackles. And while it may be a factor here, we note that the wholesale bumping of shows currently underway appears to be nondiscriminating:

The most common, though not exclusive, denominator of the shows getting bumped is that they aired during the hours defined by Manhattan Cable as "prime time" (6:00 PM to 1:00 AM).

So we asked Wanda Sanchez, Manhattan Cable's access channel coordinator, why this "sudden" surge in demand for airtime that's causing so many old shows to get bumped. In Wanda's opinion the demand has been building for six to eight months (a fact concurred with by a number of producers), and it can be attributed to several factors, including . . . "Wayne's World"!

Ah, the mixed blessings of success! Rick X's comment about public access competing successfully with Time Warner's commercial channels is right on. (You may recall that in Vol. 1, No. 1 of A/M, we addressed the issue of public access being a thorn in TW's bottom line and called for the public's ongoing vigilance in protecting our access to the public channels. An effective way of doing this is to join an organization like New York Citizens Committee for Responsible Media. Their phone number is (212) 866-8633; a NYCCRM membership application form appears elsewhere in this issue.)

We agree wholeheartedly with Rick X, and others, that the current rules—allowing a legitimate community-based program that offers a public service and is enjoyed by a sizable audience to be bumped from its familiar time-slot—are badly written and arbitrarily and inequitably enforced. Clearly those rules need a major overhaul.

We have an opportunity to address this and other important issues on June 18, when the new Cable Access Organization holds an open meeting for access producers (see CAO update elsewhere in this issue for time and location). We urge all producers to attend the meeting and contribute their ideas on how to improve the outmoded status quo. Producers are also encouraged to contact A/M with their individual tales of woe. We're all in this together.

The Editor



To the Editor:

I notice your cover price went up. It used to be a dollar. Now it's a dollar and a quarter. What the hell's going on?"

Mr. H. Goldfarb,
Fort Lee, New Jersey

A/M replies:

Sit down, H., we've got some extraordinarily bad news. . . . See the cover? Yeah, we did it again. A buck fifty (\$12 for a one-year subscription). Sorry. Can't be helped. More pages. Rising costs. Usurious postal rates.

Let us know if you're not getting your money's worth. We'll slit our wrists.

The Editor

READERS: A/M wants to hear from YOU! Send us your comments ... opinions ... questions ... complaints ... likely stories ... lame excuses ... iron-clad alibis ... conspiracy theories, etc. Write: "Feedback," c/o Letters Editor, ACCESS! MANHATTAN, P.O. Box 319 Gracie Station, New York, NY 10028. Your anonymity will be honored if desired, but your letter must have your legible signature and phone number in order for it to appear in A/M.

CABLE ACCESS ORGANIZATION (CAO) UPDATE

by Alex Quinn

The first thing I did when I moved from Portland, Oregon, into my new apartment in Manhattan was to order cable TV. Since that time I've watched a lot of public access television. I've also had a chance to meet and talk with a number of producers. I've sensed a mix of apprehension, excitement, and a bit of skepticism as the CAO prepares to "take over" public access. In the coming months, we want to allay the apprehension, encourage the excitement, and, as for the skepticism, I hope that will dissolve with time and progress.

And we have made progress. In March, the State Commission on Cable Television approved our Capital Plan. The Capital Plan describes the mix of equipment and other capital resources that will be used by the CAO.

Our first goal in delivering access services is to assume scheduling and playback responsibilities from the cable operators.

The technical design of our interim playback center is complete, and it includes several improvements for access playback. The system will accommodate programs on 3/4" Umatic, Umatic SP, S-VHS, and VHS. Furthermore, the system will play back programs recorded in stereo as well as mono. Programs can vary in length—as brief as 10 seconds, which we hope will encourage the submission of local public service announcements!

Negotiation for a temporary site with an existing interconnect to the cable systems is underway. We will contact producers directly by mail as soon as the dates and other transition arrangements are finalized.

Prior to assuming responsibilities for program playback, we want to adopt programming policies and guidelines. Many producers have expressed to me their concerns over the transition and how it will affect everything from time slots to censorship. Before we begin cablecasting, we want to have "ground rules" that are fair, equitable, and understandable. We are ever mindful of our responsibilities to provide Manhattan residents the opportunity to exercise their First Amendment rights, and to serve the public by facilitating a diversity of images, sounds, and ideas on the access channels.

We would like to hear from people regarding these issues, and have scheduled an open meeting for this purpose on Thursday, June 18, 7:00 PM at Film/Video Arts, 817 Broadway at 12th St., second floor. We have sent out a letter with this information to all current and recent producers and others on our mailing list. For a copy of our draft programming policies, contact our office.

Our search for space to house our permanent facility continues. Once established, we will offer equipment for field and studio production, post-production, training in television production, and a gathering place for people to share their ideas and talents. Completion of a permanent facility will take some time. Meanwhile, we will begin by conducting training and outreach in conjunction with existing community centers and organizations. This partnership will become very important in bringing access to people as well as people to access.

On staff right now are myself and, on a parttime basis, Diana Agosta. Also Victor Sanchez, who joined our staff in May. Victor has over 15 years' experience in television and has worked with such groups as WNYC, Globalvision,

Downtown Community Television, Third World Newsreel, and Children's Art Carnival. He will coordinate our training and outreach efforts. We also welcome Bea Moss, an active access producer, who will be volunteering with us on some upcoming projects.

If you have any questions about our activities, please give us a call. We appreciate hearing from you. Telephone (212) 925-6675.

Alex Quinn, the Executive Director of Manhattan Community Access Corporation, the Cable Access Organization for Manhattan, assumed his position in January of this year. The CAO is an independent, not-for-profit organization established as a result of the cable television franchise agreements between the City of New York and Paragon Cable Manhattan and Manhattan Cable TV. The CAO was established to administer public access television in the Borough of Manhattan.

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West Village/Noho
383 Lafayette & 4th St. (Tower Books)
753 Broadway btwn. 8th St. & Astor Pl. (Hudson News "Kiosk")
Sixth Ave. & 8th St. (S.S. Int'l. Newsstand)
462 Sixth Ave. & 11th St. (NE corner) (Niko's Smoke Shop)
488 Sixth Ave. btwn. 12th/13th Sts. (Frontier News)
Gramercy/Sofi
270 Park Avenue South btwn. 21st/22nd Sts. (Dina's)
303 Park Avenue South btwn. 23rd/24th Sts. (A & J Smoke Shop)
Chelsea
709 Sixth Ave. btwn. 22nd/23rd Sts. (Te-Amo store)
Midtown East
153 E. 53rd St. in Citicorp Bldg. (Int'l. Smoke Shop)
550 Madison Ave. & 56th St. in AT&T Bldg. (Gottfried's)
Midtown West
1771 Broadway & 57th St. (Coliseum Books)
Upper East Side
265 E. 66th St. & Second Ave. (Hudson News)
1546 First Ave. btwn. 80th/81st Sts. (Magazine Shack)
1641 Second Ave. & 85th St. (Optimo variety store)
318 E. 86th St. btwn. 1st/2nd Aves. (variety store)
1568 Third Ave. & 88th St. (variety store)
Upper West Side
Broadway btwn. 62nd/63rd Sts. (magazine store)
Broadway & 72nd St. (Magazine Mecca)
Broadway & 81st St. (Shakespeare & Co. Books)
Broadway & 86th St. (kiosk NW corner)
Broadway & 90th St. (kiosk SE corner)
2795 Broadway & 108th St. (Magazine Emporium)
2915 Broadway & 114th St. (Papyrus Books)

We need outlets in the following hoods: Washington Heights/Inwood; Central Harlem; East Harlem; Clinton; Murray Hill; Battery Park/Financial District. If you know any retailers there, we'd be ever so grateful if you'd contact us.

"I can see by your eyes, friend, you're just about gone. / Fifty-seven channels and nothin' on."

—Bruce Springsteen

A SESSION WITH "THE HIPPER SHRINK"

by Karen Burdick

Passionate jazz belts through the air from the stereo. A grand piano stands majestically in the middle of the room; a laptop computer is nearby on the couch. Two affectionate poodles make their presence known, but the Doberman who only thinks he's a poodle is consigned to the bedroom. In the West Side apartment where he lives with his wife Deyainra, Dr. Jeffrey Gardere is writing a book, taking piano lessons, and awaiting the birth of the couple's first child. Gardere is like a comet. If he could live two lives at once, he would probably live one as the psychologist that he is, and the other as a musician/writer. (Gardere wrote the theme music for his TV show and performed on some of its tracks.)

The son of Haitian parents who raised him in the States, he reflects on his early years: "My parents were good people with middle-class values. We were an intact family. But there was a lot of illness. My sister had sickle cell-anemia, and my mother was physically ill as well. Consequently, there wasn't a lot of physical love. We were always rushing back and forth to hospitals. It was not a happy childhood."

Like many therapists who have chosen this healing profession, Gardere recognizes the "emotionally impoverished background" as a common prerequisite in the field. Posing in front of the fireplace, he smiles for the camera and waits for the flash before stepping away. There are photographs on the mantel of the women he loves: his sister, and Deyainra from her high school days. You can't help but wonder if the pain in his early life was part of a bigger plan. The Rainbow Psychological Clinic, which he owns and operates in Fort Greene, in Brooklyn, lends credence to the belief that a difficult childhood often creates greatness in the adult.

The Rainbow Clinic treats 350 youngsters, most of whom live in foster homes. "These kids are from devastating backgrounds. They have either been physically abused, sexually abused, or have seen their parents abuse each other. They have this overwhelming sense of loss. It prevents them from pursuing other things, like doing well in school and going on to college." Gardere continues: "The work I do with them is to help them become emotionally whole, be aware of what they are experiencing and feeling, so that they can let in other thoughts, like ambition and success."

Gardere believes sickness can be brought on by "emotional unhappiness." He points to the photograph of his sister, who, he says, is now doing well. The application of his own childhood experiences to the work he does now is admirable, and his holistic approach extends to the families of the children he treats. "When the parent doesn't see what the child needs, we enlist the aid of the parent or foster parent to be part of the treatment team."

He nods his head toward a window facing the street. He's afraid of what is waiting "out there," and talks about how different it was for him when he was growing up. "I describe it as going from Fred Astaire's 'Easter Parade' to Gotham City in the new 'Batman' movie. It's just that scary. Sex offenders running around, gangs, venereal disease in teenagers, homelessness. Our country is very ill. We, as parents, have to work with our kids to be streetwise. Now, a lot of people say



they are not going to bring kids into this world, but I'm determined to work with them every step of the way."

THE HIPPER SHRINK, which has been on public access for two years, is a lot of fun for Gardere. "I have many plans for the show. I have a good staff. As shrinks, we talk about social issues and their emotional and psychological aspects and how they affect people. I work with a Jewish and an Italian psychologist. We're all friends and can discuss things honestly." He explains how sometimes one of them has a different perception of what is happening racially in the media and how the media lie to people. They confront each other and help clarify their differing points of view.

Gardere sees public access as a training ground for when he can do a "regular show." He calls public access "flying by the seat of your pants" television. "You don't know what camera's where. Half the time people in the studio aren't doing their jobs correctly, and you have to be able to recover and deal with situations as they happen. Sometimes a guest is a bit kooky and you have to struggle to bring them out. It's great training," he says.

Gardere also recognizes that he is different. "A lot of people say, 'You don't look Haitian.' That's because I'm not wearing polyester bell-bottoms and 40 different colors." He looks down at his multicolored pants and laughs, "I just got caught in my own joke!"

His show and his image are equally controversial. "How many Caribbean male psychologists are on the air?" he asks. And then adds, "...with a ponytail...?"

At age 36, Gardere calls love "the downfall of us all." He met Deyainra when she was working as a bank teller, and "that was it." The future holds a baby girl, due in August (he says she'll be a musician), and a few more Rainbow clinics on the East Coast. By summer he expects to have clinics in the Bronx and Queens. "Financially," he says, "things are going well. But it's not the money that's important. It's doing the work and making a difference that counts."

THE HIPPER SHRINK: Tuesdays 2:30PM/16 & Thursdays 9:30PM/17 Paragon; and Tuesdays 7:30PM/17 MCTV.

ACCESS ZAPS

by Art Lunam

This is the first of what I hope will be a regular column about what's happening with public access; new media coverage; technical tips; and commentary on the new Manhattan Community Access Corporation ("MCAC"). "Art Lunam" is not my real name—a precaution I have taken since some words that will be written here may not please the higher-ups in access management and, being an access producer, I would like to keep my time slot! Now...the news:

OH, ACCESS CORPORATION, COME OUT, COME OUT, WHEREVER YOU ARE...

It's been a while since this "wonderful" improvement in the state of public access in Manhattan was announced. Whazup?

Apparently most of the delays in getting this behemoth off the ground have been in finding a suitable space to rent—temporarily for a playback facility and permanently for the full production facility and offices. They can't find anything that's just right. Funny...it seems as I travel about Manhattan every day there are more and more "For Rent" signs popping up.

A legitimate reason for their hesitation is that if, after a while, the space turns out to be too small, Manhattan Cable will charge an exorbitant fee to reconnect a *new* new facility. (Manhattan Cable is probably planning to charge an exorbitant fee for the initial hookup, anyway.) I have recently helped friends find space in Manhattan so I know that there are entire small buildings for rent, and maybe some good access producer out there has some info on a potential space: It's got to be large, with high ceilings. Give the MCAC a call or write them a letter.

Their timetable (as of early April): 2 to 4 months for the playback facility, and at least one year for the full studios. Sorry. Maintain holding pattern.

TAPE LIBRARY: IS IT HERE OR IS IT THERE?

Some producers have been told by Manhattan Cable's tape library—or so I've been told—that it will be closing and that the producers will then have to deliver their tapes to a downtown location (in the Soho area). Alex Quinn, the MCAC's new director of public access for Manhattan, was asked by another producer what this was all about. Mr. Quinn didn't know. He had no idea what Manhattan Cable's people were talking about. But he did say that when the temporary playback facility is ready, that's when the MCAC will start taking tapes. So for now, it seems the tape library will remain a familiar sight at Manhattan Cable.

PLAYBACK FACILITY: WHAT? WHERE? HUH?

The MCAC needs to take over all the playback functions that the cable companies are begrudgingly providing for us producers. The reason for this is that Manhattan Cable alone is charging in the range of \$90,000 a month to the MCAC in tape playback fees. Now, I for one can't believe that this has been Manhattan Cable's cost to play back our tapes, but what do I know?! Once a playback facility is built and running, this cost will no longer be levied. Manhattan Cable will find some other way to bilk the MCAC; they have finessed the art of bilking. Unfortunately, the MCAC is having problems making a decision. Please do not blame Mr. Quinn—yet. As far as I know, he walked into an already bad situation. I do know that the operator of a famous live public-access studio has offered the MCAC some presently unused rooms, but the MCAC is

not acting very decisively. This offer would give the MCAC use of already existing hookups to the cable company, and it could be off and running in 2 to 3 weeks.

This is the time for all you producers to contact the MCAC and make your preference of tape format clear to those in charge, before some crony from Sony talks the MCAC into buying only 3/4 inch and Hi-8 VTRs, and locks out all us VHS and S-VHS users again, like we have been for the last 10 years. Don't get me wrong: I like 3/4 and Hi-8, but the majority of producers own VHS, so why should they be forced to pay for duplicating costs just to make their own shows?! Huh? I want to know!

By the way, setting up a working playback facility takes at most a week of good, hard work. How do I know? I've set up fully working, multi-camera *professional* studios in less than a day, that's how!

YOU SAID "BEHEMOTH." WHY "BEHEMOTH"?

Okay, I am an arrogant cynic, I admit, but my sixth sense (and, no, I am not a psychic!) tells me that we have a most urgent problem, as access producers, if this MCAC falls into the wrong hands. Right now we have a very good friend in Alex Quinn, but if he doesn't last...well...I don't know.

In their haste to set up the MCAC, the City unfortunately didn't set up a proper way of overseeing the operation of that organization. Therefore, the MCAC can in effect do whatever it wants without worry. If their board of directors decides to discourage certain types of programming that don't fit into their idea of "community" access, they certainly can make it hard for those producers. This sort of behavior can be witnessed in Queens if you try to get a program on in that borough. I've heard many stories from producers who are Queens residents that they get the impression the Queens access corporation would rather not be bothered with any programming except for those programs that *look* "community." These producers end up cablecasting in Manhattan.

The New York State Cable Commission and the Manhattan Borough President's office have expressed their frustration with the MCAC over this and other things, to certain individuals who asked them about this issue.

Am I wrong about this? Can someone from the MCAC send a copy of the by-laws to *ACCESS! MANHATTAN*, please?

The only reason to not worry is Alex Quinn. Why? Read on.

WHO IS THIS ALEX QUINN? WHEREFROM AND WHY?

The process undertaken by the MCAC's board of directors led them to look for the principal personnel to run and build the MCAC from outside the City and the State. Why overlook the center of broadcasting in the United States as a source of qualified people? "To avoid someone being already connected politically to people in the city" was the answer one producer was given by the MCAC. "To find people easier to manipulate" is *my* answer. The likelihood is that the rest of the staff positions will be filled by people who are from out-of-town or have no experience with public access in Manhattan. That's my prediction. Once again, I'm no psychic, so let's hope I'm wrong.

One bright spot out of all this is the acceptance by Alex Quinn from Portland, Oregon, to take the helm of this unbuilt ship. Mr. Quinn built from scratch and headed the Portland access system and, from what I've heard, did it extremely well. ►

◀ One producer who talked to him at length found him to be extremely open and positive about public access. Mr. Quinn had outreach programs that actually sent people out to find potential producers and help them make their shows. And censorship seems to be the last thing on Mr. Quinn's mind. Let's all hope that he can overcome the bureaucracy that seems to poison everything that is set up by City Hall, and let's hope he can quell the liberal fascists who would like to control the output of public access. (I'll explain "liberal fascists" some other day, thank you.)

If we ever see the MCAC operating before the glaciers return, it'll be in good hands with Mr. Quinn.

IN THE MEANTIME, HOW ABOUT SOME EQUIPMENT ADVICE?

I just realized that the way these captions are written makes it seem like I'm talking to myself. How embarrassing. Erase the tape, and on with the show!

A common question I get from aspiring producers is: What format should I get? VHS, VHS-C, S-VHS, 8mm, Hi8, or 3/4 inch? The answer is that there is no one answer.

I use S-VHS because of the excellent editing equipment available and the superb image I get. But it is large and somewhat bulky in camcorder size. The same problem exists with regular VHS, but a plus is that almost everyone already has a VHS deck at home and can make good rough edits by just buying a camcorder. Remember, most VHS decks cannot play S-VHS, but all S-VHS decks *can* play your old VHS tapes. S-VHS has almost twice the detail and sharpness of regular VHS or 8mm, and you'll have to pay more for it. But it's worth it, in my opinion.

If compactness is what you want, the 8mm series—regular 8mm and Hi-8—is the thing to look into. A compact version of VHS and S-VHS called Type C is available but it's hampered by limited recording time (1/2 hour in SP). The 8 series is nifty and easy to carry around. The regular 8mm image is like standard VHS (some like it better because of the different way the images look) and the sound is slightly better (if you don't use the on-camera mike). Hi-8 looks like S-VHS and has great sound...if you *give* it great sound. My problem with the format is the lack, until recently, of any decent editing equipment plus the problems caused by the small size of the tape. I've seen and heard more than once about tape scratches that would hardly affect a VHS tape but that completely obliterate the image on the 8mm tapes.

Of course most of you know that no matter what you shoot on, it has to end up on 3/4 inch for the cable companies to play it back. I suggest that if you can, edit on 1/2 inch (VHS or S-VHS) or on 8mm, and then transfer the finished program to a 3/4-inch tape. There are many used 3/4-inch recorders out there, but why spend \$300 to \$800 when the access corporation may start cablecasting in S-VHS or 8mm any month now? There are several inexpensive places where you can dub your shows; most of them are listed in the Access Producers Handbook put out by Manhattan Cable.

That's it for now. Next issue, if I haven't been uncovered and flailed by the MCAC board of directors, I'll say more that will probably convince them to do it. Also, a rant about those pesky access compilation shows popping up around the cable and broadcast dial.

P.S. To the producers of the "Access Awards" that occurred at the Slime...oops, I mean Limelight (old joke, sorry): I hope it was all worth it just to get Michael Musto to like you. (Except that, judging from his column, he probably thinks you're all a bunch of jokers.) The *real* access producers who

were hoodwinked into showing up will never forget this. The Art Lunam curse shall befall you numerous times. Well...maybe once. May you be immersed in rivers of 970-PEEE, gasping and sputtering for fresh air. May you be imprisoned with that spook from 970-JOIN for 20 eternities. May the he-she-it Escorts From Hell lock you back up in the commercial-use limbo channel where you came from and belong. (Ooh, that was rough. I apologize, folks. I just get mad at those half-breeds imported from the intellectual wastelands of our society.... Oops...over the edge again I go.)

See you next time.

"Art Lunam" is the pseudonym of an independent public access producer. His views are his own and do not necessarily represent those of this magazine. Questions and comments can be addressed to Mr. Lunam in care of A!M.

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CONTEST #5

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First: Give us your best oxymoron (contradiction in terms). *Examples:* Job security. Safe sex. Military intelligence. Congressional ethics. Spam Lite.

Second: Give us your best redundancy (words that overkill). *Examples:* Leggy supermodel. And our favorite: Dysfunctional family.

RULES OF THE GAME:

1. One each of an oxymoron and a redundancy, mixed or matched, we don't care, as long as they're very unique.
2. One winner (editor's choice).
3. One prize fits all.
4. Winning entry will appear in next issue.
5. Deadline: July 10, 1992.
6. Close personal friends of the publisher are ineligible.
7. *Good luck!*

Sorry, there were no winners of Contest #3 or #4.

NEO-BARBARISM

by Elizabeth Forel

"ENDOTRACHEAL INTUBATION": *a medical procedure involving the passing of a breathing tube through the mouth or nose into the trachea.*

Unbeknownst to most of its supporters, the American Society for the Prevention of Cruelty to Animals ("ASPCA," or the "A") has been lobbying for a bill in the New York State Legislature which would make it legal for unlicensed emergency-medicine students to practice intubation on cats whose owners or "custodians" give consent to the procedure. The "A" claims that it will maintain control over the procedures to ensure that they are done "humanely," and that the procedures would be done while the animals are undergoing spay/neuter or other non-emergency surgery. These statements, however, do not ring true. For one thing, most people would never knowingly consent to their pets being used as a learning tool by untrained students (during surgery or otherwise). Secondly, the Humane Society of New York, which probably does more spay/neuters in NYC than anyone else, never intubates cats during such surgery. (Even in the "A's" own hospital, the decision to intubate is left up to the individual veterinarians.)

By process of deduction, then, this leaves the "A," as "custodian," allowing the intubation of vulnerable shelter animals in its care.

The "A's" position is that by allowing this procedure to be done on cats—for which it can be assumed the "A" will be paid per-animal by the participating schools—the lives of babies will somehow be saved. In reality, the anatomical differences between cats and humans, including babies, are too great to apply a skill to humans that is learned on animals. Health professionals learn intubation by practicing on cadavers and specialized mannequins, and by observation and didactic lessons. Furthermore, animals often suffer physical trauma at the hands of inexperienced students and are euthanized (put to death) after practice sessions.

If the ASPCA has its way, the doors will be reopened to pound seizure (the lawful selling of shelter animals to laboratories for purposes of experimentation), with a brand-new twist: the shelter-as-laboratory, where vivisectionists will be invited, for a fee, to come and do their dirty work. *And if intubation is acceptable, then why not other so-called "harmless" experiments under the auspices of a "humane" organization such as the "A"?*

It is very curious that the ASPCA, which generally sends out legislative alerts asking for support of (or opposition to) relevant pending legislation, did not notify its members about this bill, even though the "A" itself was lobbying heavily for it in Albany. The "A's" efforts should have been devoted to lobbying *against* the bill and promoting alternatives to intubation. And the "A" should be developing and supporting legislation that will control pet-breeding and address the problem of overpopulation of cats and dogs.

The Intubation Bill is extremely dangerous, not only because of its immediate effect on shelter animals, but because of its potentially far-reaching effects: The number of spay/neuter surgeries (the single most effective weapon in fighting overpopulation) which are performed at the "A" could

decrease significantly when people suspect their pets are being used for intubation practice sessions. And it could contribute to the increased abandonment of animals because of people's overall lack of confidence in the "A" and, by extension, in other animal shelters.

Allowing the practice of intubation is a perversion of what an animal shelter is supposed to be about. It is unethical, exploitative of the animals in the shelter's custody, and a betrayal of the ASPCA's mandate "to alleviate pain, fear and suffering." Not too many years ago we fought hard to rid New York State of the barbaric practice of pound seizure. Now we must fight equally hard to prevent its insidious return, cloaked as it is this time in a deceptive new costume.

It is disturbing that intubation was routinely (though quietly) practiced at the "A," without the general public's knowledge, until a short time prior to the Intubation Bill's sudden appearance before the State Assembly about a year and a half ago.

The Intubation Bill has since passed the Assembly and may already be out of committee in the Senate. Voting is imminent, so please contact your State Senator immediately at (518) 455-2800 to voice your opposition to bill S.6313. Demand that it *not* become law. If you don't know the name of your State Senator, you can find it out by calling the League of Women Voters at (212) 674-8484.

Elizabeth Forel is cofounder of New Yorkers for Companion Animals. For further information, call (212) 427-8273. (See related article elsewhere in this issue.)

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